IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 489 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AHMEDABAD MUNICIPAL CORPN. - Appellant(s)
Versus
SWAMI VAISHNAVACHARYA RAMPRATAPDASJI - Defendant(s)

==========

Appearance :
MR PRASHANT G DESAI for Appellant(s) : 1,
MR PV NANAVATI for Defendant(s) : 1, 1.2.1, 1.2.2,1.2.3

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 16/11/2005

ORAL JUDGMENT

1. By the present First Appeal, the appellant-original defendant

challenges the judgment and decree in Civil Suit No.1275 of 1977, rendered on 7th January, 1980, by the learned Judge of Court No.20 of City Civil Court, Ahmedabad.

2. The suit was preferred by the respondents to challenge the orders passed by the appellant for attachment of properties indicated in the attachment orders, namely, properties bearing Municipal Census No.750/46, 750/42, 750/43 and 750/44 of Shaherkotda Ward of Ahmedabad City. The properties belong to a trust called "Tran Devdi Mandir Trust" The challenge was on the ground that notices were not served upon all the trusts and, therefore, the consequent orders were bad in law and in violation of principles of natural justice.

2.1 The suit was defended by filing written statement, Ex.6, denying the allegations.

3. The Trial Court framed three issues as under :-

> *"1. Whether the plaintiffs prove that the notices dated 30th October, 1976 are illegal and invalid as per facts alleged by the plaintiffs?*
>
> *2. What relief or reliefs, if any, the plaintiffs are entitled to have?*
>
> *3. What final order and decree?"*

Ultimately, by answering issue No.1 in the affirmative, the Trial Court passed the decree in favour of the plaintiffs declaring the attachment orders in respect of the suit properties as illegal, invalid and not binding to the plaintiffs and restraining the appellant-defendant from recovering any amount other than taxes as per rateable value.

4. Heard learned Advocate, Mr. P. G. Desai, for the appellant and learned Advocate, Mr. P. V. Nanavati, for the respondents.

5. Learned Advocate, Mr. Desai, while conceding the factual aspect that notice to all the trustees was not given before passing the attachment order, raised a contention that the suit ought not to have been entertained by the City Civil Court as it relates to tax recovery and the Civil Court will have no jurisdiction, as there is implied bar. The second fold of his contention is that the requisite notice contemplated under Section 487 of the Bombay Provincial Municipal Corporation Act ("B.P.M.C. Act" for short) was not issued before filing the suit and, therefore also, the suit ought not to have been entertained by the City Civil Court.

5.1 Mr. Desai submitted that there is no dispute on the finding about the old properties being renovated and given a new Census number nor is there any dispute on the question of non-issuance of notice to all the

occupants. But the notice was issued to one of the occupants. He, therefore, submitted that this appeal may be allowed.

6. Learned Advocate, Mr. Nanavati, submitted that the plea regarding implied bar of Civil Court's jurisdiction and non-issuance of notice are the pleas that are taken for the first before this Court and no such plea was taken before the Trial Court either in the written statement or during the course of arguments. He submitted that this appeal has been pending since 1981 and such a technical plea ought not to to have been taken by the appellant, which is a public body. Mr. Nanavati submitted the the decree deals with only the orders in question and does not deprive the appellant from taking action in accordance with law. He submitted that there are number of properties involved and the occupants may have conflicting interests. Therefore, issuance of notice to only one of the occupants may not be considered as sufficient compliance. The decree by the Trial Court, therefore, is just, legal and proper and may not be interfered with.

7. Following are the undisputed facts :-

(1) That the properties in question are more than one and in respect of such properties, the attachment orders came to be issued.

(2) Notice came to be issued only to one of the occupants and rest of the

occupants nor any of the trustees have been issued the notice before passing the attachment order.

(3) The properties in question are reconstructed and given new Census number.

8. Now the question that requires consideration is whether the appeal can be allowed on the ground that notice under Section 487 of B.P.M.C. Act has not been given and/or the Civil Court's jurisdiction would be impliedly barred, as the matter relates to tax recovery.

9. It is clear from the pleadings that notice under Section 487 of B.P.M.C. Act does not appear to have been given before filing the suit. It is true that no such plea was taken before the Trial Court on maintainability of the suit, but the plea that is raised by the learned Advocate for the appellant is a purely legal plea and can be taken at this appellate stage. On examining Section 487 of B.P.M.C. Act, it is clear that it starts with a non-obstante clause and puts a bar on entertainment of suit without issuance of notice. The Trial Court, therefore, ran into an error in entertaining the suit in absence of notice under Section 487 of the B.P.M.C. Act. The Trial Court ought not to have entertained the suit. The judgment and decree, therefore, cannot be permitted to stand. The appeal deserves to be allowed and the same is allowed. The judgment and decree rendered by the learned Judge of Court No.20 of City

Civil Court, Ahmedabad, on 7th January, 1980 in Civil Suit No.1275 of 1977 is hereby set aside. No costs.

[A. L. DAVE, J.]

gt